93-202

Supreme Court, U.S.
FILED
JUL 20 1993
OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER 1993 TERM

KURAHARA & MORRISSEY,
Petitioner, Appellant and
Real Party In Interest,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Respondent, Appellee and
Plaintiff.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Robert L. Mezzetti
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(Stamp)
F I L E D
FEB 8, 1993

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION,	)	
Plaintiff-Appellee,	)	No. 91-56423
v.	)	D.C. No. CV-86-6016-AHS
JOHN L. MOLINARO,	)	
Defendant,	)	
and	)	
KURAHARA & MORRISSEY,	)	
Real-Party-In-Interest-Appellant.	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
Plaintiff-Appellee,	)	No. 91-56212
v.	)	D.C. No. CV-86-6016-AHS
JOHN L. MOLINARO,	)	

Defendant,	
and	
KURAHARA & MORRISSEY,	MEMORANDUM[1]
Real-Party-In-Interest-Appellant.	

Appeal from the United States
District Court
for the Central District of California
Alicemarie H. Stotler,
District Judge, Presiding

Argued and Submitted December 7, 1992
Pasadena, California

Before: BROWNING, SCHROEDER
and FLETCHER, Circuit Judges

During litigation to recover approximately $1.3 million that Kimberleigh Ferm received from her former husband John Molinaro, FDIC began to suspect that Ferm's attorneys, Kurahara & Morrissey (K&M), were charging unreasonable attorney's fees that

*This disposition is not appropriate for publication and may not be cited to or for the courts of this circuit except as provided by 9th Cir. R. 36-3.

threatened to dissipate Ferm's assets despite the presence of a preliminary injunction (approved FSLIC v. Ferm, No. 87-6729, reported in table at 881 F.2d 1083 (9th Cir. 1989)) prohibiting Ferm from spending any money except that needed for living expenses and "reasonable" attorney's fees.

FDIC moved for an order requiring K&M to repay a portion of its fees. The court denied the motion without prejudice to refiling it at the close of the litigation. FDIC then moved for in camera review of K&M's bills to ensure they were reasonable. The court granted the motion and we affirmed. FSLIC v. Ferm, 909 F.2d 372 (9th Cir. 1990).

The parties eventually negotiated a settlement agreement in which Ferm promised to relinquish the disputed funds in return for a release. The district court approved the settlement and entered

judgment. FDIC subsequently dismissed all remaining claims against Ferm. After the court entered judgment, FDIC moved for an order requiring K&M to repay fees that FDIC claimed were excessive. The court granted the motion over K&M's opposition. Before the court issued its final ruling setting the amount to be repaid, K&M moved for an order vacating submission of the motion for repayment and dismissing the proceeding. FDIC opposed the motion and moved for sanctions against K&M.

The district court entered an order requiring K&M to repay $398,011.97 in excessive fees, denied K&M's motion to vacate submission, and ordered K&M to pay $2,975 in sanctions to FDIC. K&M appeals.

I.

The district court had jurisdiction to determine whether K&M's fees were reasonable. Paragraph 2(d) of the settlement agreement explicitly contemplated a motion for repayment of attorney's fees, and paragraph 9 provides, "The court presiding over the Action shall retain jurisdiction to enforce the provisions of this Agreement."

The record supports the conclusion that under the settlement agreement the court's jurisdiction to consider a motion for repayment of fees did not end with the entry of judgment on the merits. K&M opposed FDIC's initial motion for repayment of fees on the ground that addressing the issue of fees during the litigation would undermine the attorney-client relationship between it and Kimberleigh Ferm and claimed the motion must be brought, if at all, at the close

of litigation. The district court denied the motion "without prejudice to refiling it at the conclusion of this litigation." Thus K&M, FDIC, and the court understood any motion for repayment of fees would be brought at the end of proceedings, after judgment had been entered.

II.

We need not decide who bore the burden of proving K&M's fees were reasonable. If K&M bore the burden, it failed to provide sufficient information for the district court to assess the reasonableness of its fees. If FDIC bore the burden, it presented sufficient evidence to establish prima facie that the fee requests were not properly supported. FDIC submitted copies of the Bank of California account statements and K&M's bills, and compiled charts of

inadequately documented and unnecessary fees and costs. K&M offered no evidence to the contrary but simply argued FDIC had failed to meet its burden of proof. On this record, we cannot say the district court's finding that certain of K&M's requests for fees were unreasonable was clearly erroneous.

The district court was not required to order an accounting rather than repayment. Although FDIC moved for an accounting as an alternative, it argued primarily for repayment and did not suggest an accounting was necessary before repayment could be ordered. K&M clearly had notice FDIC sought immediate repayment and requested an accounting only as an alternative fall-back remedy.

III.

Even if the district court had

lacked jurisdiction over the motion for repayment of fees, it would have had jurisdiction to impose sanctions for filing the motion to vacate and dismiss -- a motion that was in effect a motion for reconsideration. See Willy v. Coastal Corp., 112 S.Ct. 1076, 1081 (1992) ("The interest in having rules of procedure obeyed . . . does not disappear upon a subsequent determination that the court was without subject-matter jurisdiction.") However, K&M's filing of such a motion was not sanctionable. It was not improper for K&M to seek reconsideration of a decision that raised several novel issues and imposed severe financial liability on K&M. There is nothing in the record to indicate that K&M filed the motion in bad faith or to delay or to multiply the proceedings. See In Re Grantham Bros., 922 F.2d 1438 (9th Cir. 1991) (objective intent to

delay proceedings will support Rule 11 sanctions); Zambrano v. City of Tustin, 885 F.2d 1473, 1481-83 (9th Cir. 1989) (award of fees under Local Rule 27.1 must be based on finding of bad faith or deliberate violation of court order); Kanarek v. Hatch, 827 F.2d 1389 (9th Cir. 1987) (award of fees under 28 U.S.C. § 1927 must be based on finding of recklessness or bad faith). Moreover, an award of attorney's fees for bad faith conduct may be made "'only in exception cases and for dominating reasons of justice.'" Ass'n of Flight Attendants, AFL-CIO, v. Horizon Air Indus., Inc., 976 F.2d 541, 550 (9th Cir. 1992) (citations omitted).

The judgment in No. 91-56212 is affirmed. The judgment in No. 91-56423 is reversed. Each side will bear its own costs on appeal.

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(Stamp)
F I L E D
NOV 9, 1987

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION,	)	Case No. 86-6016 AHS (Gx)
Plaintiff,	)	STIPULATION TO MODIFY
vs.	)	ORDER OF PRELIMINARY INJUNCTION

JOHN L. MOLINARO, et al., Defendants.	AND ORDER THEREON
AND RELATED CROSS-ACTIONS.	

PREAMBLE

1. The Court on October 19, 1987 granted plaintiff's application for issuance of a preliminary injunction and on October 28, 1987 issued its Order of Preliminary Injunction.

2. The parties hereto agree and petition the Court to allow defendant Ferm to remove funds which she has placed in a safe deposit box at the First Cayman Bank, Cayman Islands, British West Indies, to an account in a California bank so that said may earn interest and the account shall be subject to the Order of Preliminary Injunction.

Now, therefore, plaintiff Federal Savings and Loan Insurance Corporation

("FSLIC") and defendant Kimberleigh L. Ferm (aka Kimberleigh L. Molinaro) by and through her special counsel hereby stipulate as follows:

STIPULATION

The Order of Preliminary Injunction issued by the Court on October 29, 1987 may be modified by the addition thereto of the following paragraph 7:

7. Kimberleigh L. Ferm, in compliance with the Order of Preliminary Injunction, may incur the expense of traveling to the Cayman Islands for the purpose of remitting any funds held by her in a safe deposit box at First Cayman Bank, or any other funds held by her in the Cayman Islands, to accounts in the name of Kimberleigh

L. Ferm at the Bank of California, N.A., Los Angeles branch. The reasonable expenses incurred by Kimberleigh L Ferm in (a) making such a trip and (b) remitting any funds so deposited by wire transfer to The Bank of California may be paid from any monies owed by Ferm. The account into which such funds are deposited at The Bank of California, N.A. shall be in the name of Kimberleigh L. Ferm, but provided that (1) Ferm shall place up to $100,000 in a money market checking account and the balance of any funds into one or more Certificates of Deposit which are short term (not to exceed 180 days), non-negotiable, non-transferable, with interest credited to the Certificate at maturity and automatically

renewable (although the renewal terms) with one or more of such certificates to be available at their normal maturity to replenish the checking account so that the balance after authorized withdrawals shall not fall below $20,000 and the account shall be maintained with a balance in the range from $20,000 as a low and $100,000 as a high and (2) Ferm shall be entitled to draw or pay from such checking account only the following amounts without further Court order: (a) sums not to exceed $5,000 a month to pay reasonable living expenses; and (b) the payment of reasonable professional statements submitted by Ferm's counsel for the representation of her interests in this action. Any further

disbursement from such checking account, such as for state or federal taxes or emergency or extraordinary expenses incurred by Kimberleigh L. Ferm, shall be as authorized by the Court upon the stipulation of the parties or upon ex parte or noticed application or after final judgment on the merits pertinent to the moneys in such account. The monthly statements for such account shall be submitted to the Bank to Kimberleigh L. Ferm, her counsel and plaintiff's counsel. A copy of this order may be served on The Bank of California, N.A., Los Angeles Branch but that Bank shall not be responsible for monitoring or limiting withdrawals from Ferm's

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account.

LAWLER, FELIX & HALL
RICHARD L. FRUIN, JR.
MARK S. LEE

November 4, 1987

By: (Signature)
Richard L. Fruin, Jr.
Attorneys for
Plaintiff Federal
Savings and Loan
Insurance Corporation

KURAHARA & MORRISSEY
MICHAEL MORRISSEY

November 3, 1987

By: (Signature)
Michael Morrissey
Attorneys for
Kimberleigh L. Ferm

ORDER

Upon the stipulation of plaintiff and defendant Kimberleigh L. Ferm, the Order of Preliminary Injunction issued after hearing on October 19, 1987 is modified by the addition of the following

paragraph thereto:

7. Kimberleigh L. Ferm, in compliance with the Order of Preliminary Injunction, may incur the expense of traveling to the Cayman Islands for the purpose of remitting any funds held by her in a safe deposit box at First Cayman Bank, or any other funds held by her in the Cayman Islands, to accounts in the name of Kimberleigh L. Ferm at The Bank of California, N.A., Los Angeles branch. The reasonable expenses incurred by Kimberleigh L Ferm in (a) making such a trip and (b) remitting any funds so deposited by wire transfer to The Bank of California may be paid from any monies owed by Ferm. The account into which such funds are deposited at The Bank of California, N.A. shall be in the name of Kimberleigh L. Ferm, but provided that (1) Ferm shall place up to $100,000 in a money market checking account and the

balance of any funds into one or more Certificates of Deposit which are short term (not to exceed 180 days), non-negotiable, non-transferable, with interest credited to the Certificate at maturity and automatically renewable (although the renewal terms) with one or more of such certificates to be available at their normal maturity to replenish the checking account so that the balance after authorized withdrawals shall not fall below $20,000 and the account shall be maintained with a balance in the range from $20,000 as a low and $100,000 as a high and (2) Ferm shall be entitled to draw or pay from such checking account only the following amounts without further Court order: (a) sums not to exceed $5,000 a month to pay reasonable living expenses; and (b) the payment of reasonable professional statements submitted by Ferm's counsel for the

representation of her interests in this action. Any further disbursement from such checking account, such as for state or federal taxes or emergency or extraordinary expenses incurred by Kimberleigh L. Ferm, shall be as authorized by the Court upon the stipulation of the parties or upon ex parte or noticed application or after final judgment on the merits pertinent to the monies in such account. The monthly statements for such account shall be submitted to the Bank to Kimberleigh L. Ferm, her counsel and plaintiff's counsel. A copy of this order may be served on The Bank of California, N.A., Los Angeles Branch but that Bank shall not be responsible for monitoring or limiting withdrawals from Ferm's account.

Dated: November 9, 1987

Signature
Alicemarie H. Stotler
United States District Judge

ARTER, HADDEN, LAWLER, FELIX & HALL
RICHARD L. FRUIN, JR.
EDWIN W. DUNCAN
MARK S. LEE - State Bar No. 94103
J. MICHAEL ECHEVARRIA
700 South Flower Street, 30th Floor
Los Angeles, California 90017

Attorneys for Plaintiff
Federal Deposition Insurance
Corporation as Manager for the
FSLIC Resolution Fund

(Stamp)
F I L E D
MAR - 6 1991

(Stamp)
E N T E R E D
MAR 7 1991

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE CORPORATION AS MANAGER FOR THE FSLIC RESOLUTION FUND,	)	Case No. 86-6016 AHS (Gx)
Plaintiffs,	)	STIPULATION AND ORDER FOR DISMISSAL OF UN-ADJUDICATED CLAIMS PURSUANT TO FEDERAL RULE
vs.	)	

JOHN L. MOLINARO, et al., Defendants.	)	OF CIVIL PROCEDURE 41(A)
AND RELATED CROSS-ACTIONS.	)	

Plaintiff Federal Deposit Insurance Corporation as Manger of the FSLIC Resolution Fund ("FDIC"), and defendants Kimberleigh Ferm and Lavonne Ferm having entered into a settlement agreement; the Court have entered judgment pursuant to that settlement on December 7, 1990 with regard to a certain parcel of real property commonly known as the "Calcaterra Court" property only; said the Court having entered an order declaring the parties settlement agreement to be in good faith on or about February 4, 1991;

IT IS STIPULATED BETWEEN THE PARTIES that all unadjudicated claims contained in FDIC's first amended complaint,

together with all amendments and supplements thereto, shall be dismissed with prejudice as to defendants Kimberleigh and Lavonne Ferm. Said dismissal shall not affect the December

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7, 1990, judgment described above.

DATED: February 22, 1991.

ARCHER, HADDEN,
LAWLER,
FELIX & HALL
RICHARD L. FRUIN, JR.
EDWIN W. DUNCAN
MARK S. LEE
J. MICHAEL ECHEVARRIA

By: (Signature)
Mark S. Lee
Attorneys for
Plaintiff
Federal Deposit
Insurance
Corporation as
Manager for the
FSLIC Resolution
Fund

DATED: February 27, 1991.

KURAHARA & MORRISSEY

By: (Signature)
Michael T. Morrissey
Attorneys for
Defendants
Kimberleigh and
Lavonne Ferm

IT IS SO ORDERED

DATED: MAR - 6 1991

(Signature)
UNITED STATES DISTRICT JUDGE

(Stamp)
E N T E R E D
AUG 8 1991

(Stamp)
F I L E D
AUG - 7 1991

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL DEPOSIT INSURANCE CORPORATION AS MANAGER FOR THE FSLIC RESOLUTION FUND,	)	Case No. 86-6016 AHS (Gx)
Plaintiffs,	)	ORDER TO REPAY UNREASONABLY INCURRED ATTORNEYS FEES AND COSTS
vs.	)	
JOHN L. MOLINARO, et al.,	)	(Stamp) **THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d)**
Defendants.	)	

I. FACTS AND PROCEDURAL BACKGROUND

In this action, FDIC alleged that defendant John Molinaro and others, including defendant Kimberleigh Ferm, engaged in a series of fraudulent schemes to loot the assets of no defunct Ramona Savings & Loan Association. Specifically, plaintiff alleged that Molinaro fraudulently transferred funds illegally obtained from the bankrupt Ramona Savings to conceal those funds from the FDIC, as successor to FSLIC. When the FDIC amended its complaint on May 5, 1987, it named defendant Ferm as one of the alleged fraudulent transferees.

Defendant Ferm retained the law firm of Kurahara and Morrissey ("K&M) to represent her against two claims of the 42 counts alleged in the First Amended Complaint. Counts 31 and 32 alleged that defendant Ferm was liable for

certain fraudulent conveyances and conspiracy to conceal those fraudulent conveyances. The allegations were based on documents seized from Molinaro at the time of his arrest. The documents indicated that Molinaro and Ferm concealed millions of dollars in various banks in the Cayman Islands.

On October 28, 1987, the court issued a preliminary injunction freezing Ferm's assets during the pendency of the FDIC's actions against her. Two weeks later, on November 9, 1987, the Court modified the preliminary injunction pursuant to a stipulation of the parties. The stipulation allowed Ferm to return to the Cayman Islands to obtain the fraudulently transferred funds. The stipulation further provided that the funds were to be placed on deposit with The Bank of California. From that fund, Ferm was permitted to withdraw $5,000.00

a month for a living allowance and the amount needed to pay her attorneys "reasonable" fees. See Moving Papers, Exhibit A.

Pursuant to the stipulation, approximately $1.3 million of Ferm's was returned to the United States and placed on deposit with the Bank of California. However, the FDIC soon became concerned that Ferm was dissipating the frozen funds by making payments to recover her excessive attorneys' fees. For example, K&M received approximately $400,000.00 from the frozen funds in the five months immediately following the Court's Order modifying the injunction. FDIC responded by filing a motion for an accounting and an Order requiring repayment of fees determined by the Court to be unreasonable. On June 1, 1988, however, the Court denied plaintiff's motion "without prejudice to refiling at the

conclusion of this litigation."

K&M continued to receive massive sums of money for the legal services during the four months following the Court's denial of the first Motion for an Accounting of Fees. Accordingly, the FDIC brought a second accounting motion based on allegedly excessive fee withdrawals made after April 29, 1988, the filing date for its first accounting motion.n the FDIC's second motion, the FDIC simply requested the Court to conduct a confidential review of M&M's fee requests. On December 27, 1988, the Court granted FDIC's motion and further modified the injunction to require K&M to submit to the Court all invoices for legal services and expenses rendered in connection with Ferm's defense. The invoices were to be submitted under seal for an in camera review to determine whether the firm's fees were reasonable.

See generally Federal Savings & Loan Insurance Corp. v. Ferm 909 F.2d 372 (9th Cir. 1990).

Before the Court's Accounting Order was entered to restrict Ferm's access to the disputed funds, however, K&M received, by plaintiff's calculations, a total of $722,733.31 from the frozen funds during the period between November 1, 1987 and November 30, 1988. Hence, because the litigation has now reached a conclusion, the FDIC, on April 12, 1991, filed a Motion for an Order Requiring Repayment of Fees and Costs. The motion is directed to those funds paid to satisfy K&M's "unreasonable" fee requests, which plaintiff contends amount to $581,680.42 (Moving Papers, at 2) or $581,740.82 (id. at 3). K&M applied ex parte for, and obtained over objection, a postponement from May 6 to June 24 for the hearing. On June 11, 1991, K&M Filed

opposition. Plaintiff filed its Reply Brief on June 17, 1991.

On June 24, 1991, the matter can on regularly for hearing. In the Court's Tentative Ruling, the Court ruled that it had continuing jurisdiction to adjudicate plaintiff's motion and determined that the motion was well taken. A copy of the Tentative Ruling is attached to this Order. However, the Court took the matter under submission so that it could evaluate K&M's billing statements (attached as Exhibit C to plaintiff's motion) with greater care.

Having now completed its study, the Court determines as indicated below that $184,982.00 constitutes a reasonable fee for the services performed by the law firm of K&M. Accordingly, since the total fees for the "Actual Time" expended is $533,433.50 (see Motion Papers, Exhibit C; Motion Papers, at 15), the

Court determines that $348,451.00 constitutes the total fees unreasonably incurred. The Court further determines that $49,560.97 constitutes the total amount of costs unreasonably incurred by K&M.

II. DISCUSSION

A. Reasonableness of Hours Expended

As noted in the Court's Tentative Ruling, when determining the amount of a reasonable attorneys' fee, the federal courts use the lodestar/multiplier approach adopted by the Supreme Court in Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). The "lodestar" approach involves a two-step analysis. "First, the Court must determine a 'lodestar' amount by multiplying the number of hours reasonably expended on the litigation by

a reasonable hourly rate. Second, the Court may increase or decrease the lodestar fee based on factors identified by [the Ninth Circuit] in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), that are not subsumed within the initial calculation of the lodestar." D'Emanuele v. Montgomery Ward & Co., Inc., 904 F.2d 1379, 1383 (9th Cir. 1990).

Because the Court has already concluded that "the rates claimed for partners, associates, legal assistants, and law clerks are . . . reasonable," (see Tentative Ruling, Paragraph 4), the Court's present focus is on the reasonableness of the hours allegedly expended on behalf of Ms. Ferm's defense. The Court's calculations are as follows:

Michael T. Morrissey:

Inadequately Documented Hours	=	567.1
Unnecessary Time	=	149.5
Excessive Time	=	56.5
TOTAL	=	773.1

hours

Actual Time:	1,028.8
Unreas. Time:	773.1
Reas. Time	225.7 hours

(11/87-5/88)

127.9 hours X $150/hour = $19,185.00

(5/88-11/88)

127.9 hours X $200/hour = $25,580.00

TOTAL = $44,765.00

Jan Y. Kurahara:

Inadequately Documented Hours	=	386.1
Unnecessary Time	=	196.6
Excessive Time	=	131.2
TOTAL	=	713.9

hours

Actual Time: 943.4

Unreas. Time: 713.9

Reas. Time 229.5 hours

(11/87-5/88)

114.8 hours X $150/hour = $17,220.00

(5/88-11/88)

114.8 hours X $200/hour = $22,960.00

TOTAL = $40,180.00

Sharon Cortright:

Inadequately Documented Hours = --

Unnecessary Time = 11

Excessive Time = --

TOTAL = 11.0

hours

Actual Time: 11.0

Unreas. Time: 11.0

Reas. Time 00.0 hours

(11/87-5/88)

00.0 hours X $125/hour = $0.00

(5/88-11/88)

00.0 hours X $150/hour = $0.00

TOTAL = $0.00

Cynthia B. Neuenschwander:

Inadequately Documented Hours	=	18.6
Unnecessary Time	=	60.4
Excessive Time	=	31.0
TOTAL	=	110.0

hours

Actual Time:	305.7
Unreas. Time:	110.0
Reas. Time	195.7 hours

(11/87-5/88)

97.9 hours X $120/hour = $12,237.50

(5/88-11/88)

97.9 hours X $150/hour = $14,685.00

TOTAL = $26,922.00

James Mazzco:

Inadequately Documented Hours	=	7.5
Unnecessary Time	=	--
Excessive Time	=	--
TOTAL	=	7.5

hours

Actual Time: 38.5

Unreas. Time: 7.5

Reas. Time 31.0 hours

(11/87-5/88)

97.9 hours X $120/hour = $1,937.50

(5/88-11/88)

97.9 hours X $150/hour = $2,325.00

TOTAL = $4,262.50

Legal Assistants:

Inadequately Documented Hours	=	34.6
Unnecessary Time	=	47.5
Excessive Time	=	233.85
"Routine Time"	=	1.1
TOTAL	=	317.1

hours

Actual Time: 742.0

Unreas. Time: 371.1

Reas. Time 424.9 hours

424.9 hours X $100/hour = $42,490.00

Law Clerks:

Inadequately Documented Hours	=	73.8
Unnecessary Time	=	--
Excessive Time	=	46.75
"Routine Time"	=	438.9
TOTAL	=	559.5

hours

Actual Time: 911.0

Unreas. Time: 55935

Reas. Time 351.50 hours

351.5 hours X $100/hour = $26,362.50

TOTAL REASONABLE FEES = $184,982.00

TOTAL FEES ("Actual Time") = $533,433.50

TOTAL REASONABLE FEES = $184,982.00

UNREASONABLE FEES = $389,451.50

As can be seen from the Court's calculations, the Court has essentially adopted plaintiff's analysis of K&M's billing statements. While this may deprive K&M of some legitimate fees, K&M's scant opposition has left the Court with no choice under the governing law. Under Jordan v. Multnomah County, 815 F.2d 1258, 1263 (9th Cir. 1987), "[t]he fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, . . . that the claimed rate and number of hours are reasonable." It is not sufficient for the fee applicant to opine that all of the time claimed was reasonably spent; rather, the applicant must submit records sufficiently detailed that a neutral judge can make a fair evaluation of the time expended and the nature and need for the services provided. Id. In this case, however, K&M has failed to provide

any adequate documentation or justification for the hours expended on behalf of Ms. Ferm.

With respect to the numerous depositions attended by K&M attorneys, for example, K&M has failed to carry its burden of justifying the legal fees charged. K&M makes no attempt to list the deponents and explain their relevance to Ferm's case. Indeed, K&M's billing statements include numerous entries for "depositions" and related preparation without even identifying the subject deponents. Furthermore, K&M's opposition provides no response to plaintiff's contention that K&M attended many depositions for the purpose of representing defendant John Molinaro's interests. For instance, although K&M could have easily refuted plaintiff's contention by showing that Molinaro's attorney also attended the depositions,

K&M never made such a showing. Consequently, the Court is left to speculate as to the propriety and reasonableness of K&M's participation in unspecified and ostensibly irrelevant discovery proceedings.

Similarly, K&M's billing statements inadequately document the countless hours spent on "legal research." The billing statements do not offer any indication as to why the legal research was conducted. For example, although K&M's personnel could have easily done so, they failed to relate K&M's legal research to any particular Court hearings, motions, or issues relevant to plaintiff's claims against Ms. Ferm. Despite the continuance granted on April 22, 1991 to provide K&M additional time to prepare its opposition to the instant motion, K&M's opposition is no more enlightening.

In light of these failings, the

Court is left with no choice but to disallow all of the challenged billing entries. While the Court contemplate disallowance of a given percentage of the challenged fees rather than a total disallowance, it is clear that such an approach would be invalid. The Court cannot arbitrarily slash or increase the number of hours reasonably incurred simply to achieve an what appears to be an ostensibly fair fee calculation. See D'Emanuele, 904 F.2d at 1385. Rather, the Court is obligated to find that the claimed fees are sufficiently documented and reasonably incurred. Id. at 1385-87. In this case, however, K&M has deprived the Court of its ability to make an independent determination of the reasonableness of their efforts. Accordingly, because K&M have failed to document or otherwise justify the challenged fees, the challenged fees

cannot be retained.

As noted in the Court's Tentative Ruling, this result may seem harsh, but the Court does not have any documentary evidence sufficient to support any other disposition. Moreover, "the fact remains that K&M knew that it was receiving funds from an account under Court control and supervision. Accordingly, K&M was on notice that it would eventually have to explain and justify its billing statements." See Tentative Ruling, Paragraph 5.

B. Unreasonable Costs

The Court concludes that $49,560.97 constitutes unreasonable costs based on the following calculations:

1.	Unexplained "cash/expenses"	$2,460.00
2.	Unexplained taxi/car rentals	$975.67
3.	Court Reporter Fee	(justified)
4.	Margin Giant Loan	$7,841.50
5.	Unexplained Limousine Rental	$201.60
6.	Mezzetti Consulting Fees	(justified)
7.	Lavonne Ferm Payment	$200.00
8.	Non-Ferm Deposition Transcripts	$8,001.00
9.	L.A. Travel and Expenses	$804.00
10.	Cayman Islands Expenses (justified but excessive)	$3,000.00
11.	Econ. & Fin. Expert C. Harper	$10,350.00
12.	Real Estate Appraisers	$15,727.20
TOTAL UNJUSTIFIED COSTS =		$49,560.97

Again, as can be discerned from the above calculations, the Court has

disallowed many of the costs challenged by plaintiff's motion due to K&M's failure to provide adequate documentation or justification for such costs. In opposition, K&M provides only limited explanations for some of the costs challenged by plaintiff. For example, while K&M explains that the $7,841.50 paid to "Marvin Giant Loan" was incurred due to a large document copying job, K&M makes absolutely no attempt to explain the "need for [such] services." Similarly absent from the record is any explanation for the need and relevance of the real estate appraisal and financial consultant fees. Accordingly, K&M may not properly retain the costs listed above.

III. CONCLUSION

The Court grants plaintiff's Motion

for Order Requiring Repayment of Fees and Costs. Accordingly, K&M is directed to repay the sum of $398,011.97[1] in unreasonable fees and costs by redepositing that sum into Bank of California Account No. 032-366474 within

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[1] While the Court agrees with plaintiff's contention regarding the inadequacy of K&M's fee documentation and the unreasonableness of the claimed fees, the Court's calculations have yielded a different sum of unreasonable fees. The Court deviates from plaintiff's calculations because, in the Court's view, plaintiff's fee calculations have no relation to the "Actual Time" expended by K&M personnel. Although plaintiff calculated the "remaining reasonable hours" by subtracting the unreasonable hours from the "actual" hours, plaintiff apparently obtained the claimed total of unreasonable fees by subtracting the total number of reasonable fees and costs from the $722,733.31 allegedly extracted by K&M during the months in issue. However, when the Court attempted to use $722,733.31 as a reference figure, the Court's calculations of a reasonable fee and unreasonable fee produced inconsistent results. Accordingly, the Court calculated the fees by reference to the total fees charged, which was derived by multiplying the "Actual Time" expended by the applicable hourly rates. See Moving Papers, at 12 and 15.

60 days of the date of this Order.

TOTAL AMOUNT SUBJECT TO REPAYMENT:

TOTAL UNREASONABLE FEES	=	$348,451.00
TOTAL UNJUSTIFIED COSTS	=	$49,560.97
TOTAL	=	$398,011.97

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order on counsel for all parties.

DATED: August 6, 1991.

(Signature)
ALICEMARIE H. STOTLER
UNITED STATES DISTRICT JUDGE

cc: Richard L. Fruin, Jr.
Edwin W. Duncan
Mark S. Lee
J. Michael Echevarria
ARTER, HADDEN, LAWLER, FELIX & HALL
700 South Flower St., 30th Flr.
Los Angeles, CA 90017

Michael T. Morrissey
KURAHARA & MORRISSEY
1871 The Alameda, Ste. 450
San Jose, CA 95126

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE ALICEMARIE H. STOTLER,
JUDGE, PRESIDING

TENTATIVE RULING ON LAW & MOTION MATTERS

June 24 1991 Calendar No. 1

CASE: F.D.I.C. V. JOHN F. MOLINARO, et al.

SA CV 86-6016-AHS (RWRx)

MOTION(S) PENDING: Plaintiff's Motion for Order Requiring Repayment of Unreasonable Fees and Costs or, Alternatively, Requiring an Accounting by Kimberleigh Ferm's Attorneys

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1. The Court grants plaintiff's Motion for Order Requiring Repayment of Unreasonable Fees and Costs. It is well established that district courts "retain jurisdiction to rule upon a request for attorney fees, . . . [and may do so] at a

point substantially beyond entry of final judgment." League of Women Voters of California v. F.C.C., 751 F.2d 986, 990 (9th Cir. 1985). In addition, a district court has continuing jurisdiction to enforce the terms of a preliminary injunction by requiring attorneys who receive funds in violation of the injunction to return the funds even though the court no longer has jurisdiction over the remainder of the action. See Commodity Futures Trading Commission v. Co Petro Marketing Group, Inc., 700 F.2d 1279, 1282 (9th Cir. 1983). Hence, the fact that the FDIC's claims against defendant Ferm have been dismissed with prejudice does not deprive the Court of jurisdiction to determine whether her attorneys received fee payments in excess of those authorized by the Court's injunction.

2. The Court rejects Kurahara &

Morrissey's ("K&M") argument that FDIC's entitlement to recovery of excessive fees is based on the assignment provisions contained in the parties' settlement agreement. The FDIC's motion is not predicated upon the contention that the FDIC is entitled to repayment of the excessive fees because it is an assignee of Ferm's right to use K&M for malpractice. The FDIC's motion is brought to enforce its rights under the Court's preliminary injunction freezing Ferm's assets for the benefit of the FDIC pending resolution of this action. Accordingly, K&M's reliance on Goodley v. Wank & Wank, Inc., 62 Cal. App. 3d 389, 133 Cal. Rptr. 83 (1976) (holding that legal malpractice claims were not assignable); Jackson v. Rogers & Wells, 210 Cal. App. 3d 336 (1989), is misplaced.

3. In determining the amount of a

reasonable attorneys' fee, the federal courts use the lodestar/multiplier approach adopted by the Supreme Court in Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983). The "lodestar" approach involves a two-step analysis. "First, the Court must determine a 'lodestar' amount by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Second, the Court may increase or decrease the lodestar fee based on factors identified by [the Ninth Circuit] in Kerr v. Screen Extras Guild, Inc., 526 F.2d 67, 70 (9th Cir. 1975), that are not subsumed within the initial calculation of the lodestar." D'Emanuele v. Montgomery Ward & Co., Inc., 904 F.2d 1379, 1383 (9th Cir. 1990).

4. Reasonable Hourly Rate: The Court does not find that the rates

claimed for partners, associates, legal assistants, and law clerks are other than reasonable.

5. Hours and Costs Unreasonably Expended: Under Jordan v. Multnomah County, 815 F.2d 1258, 1263 (9th Cir. 1987), "[t]he fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, . . . that the claimed rate and number of hours are reasonable." It is not sufficient for the fee applicant to opine that all of the time claimed was reasonably spent; rather, the applicant must submit records sufficiently detailed that a neutral judge can make a fair evaluation of the time expended and the nature and need for the services provided. Id K&M's ex parte application to continue the hearing for two months on the ground of additional time was needed to respond was

granted on April 22, 1991.

In this case, however, K&M provide limited explanations of only a few entries for fees and costs challenged by the FDIC. K&M's explanations do not provide any basis for determining that the challenged costs and fees were expended reasonably on behalf of defendant Ferm. For example, while K&M explains that the $7,841.50 paid to "Marvin Giant Loan" was incurred due to a large document copying job, K&M make absolutely no attempt to explain the "need for [such] services." As such, the Court concludes that K&M cannot properly retain such unjustified fees and costs. While this may see harsh, the fact remains that K&M knew that it was receiving funds from an account under Court control and supervision. Accordingly, K&M was on notice that it would eventually have to explain and

justify its billing statements.

6. After the hearing, the Court will modify, sign and file plaintiff's Proposed Order to Repay Attorneys' Fees and Costs.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

(Stamp)
F I L E D
APR 21 1993

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION,	)	
Plaintiff-Appellee,	)	No. 91-56423
v.	)	D.C. No. CV-86-6016-AHS
JOHN L. MOLINARO,	)	
Defendant,	)	
and	)	
KURAHARA & MORRISSEY,	)	
Real-Party-In-Interest-Appellant.	)	
FEDERAL DEPOSIT INSURANCE CORPORATION,	)	
Plaintiff-Appellee,	)	No. 91-56212
v.	)	D.C. No. CV-86-6016-AHS

JOHN L. MOLINARO, Defendant, and KURAHARA & MORRISSEY, Real-Party-In-Interest-Appellant.	ORDER

Before: BROWNING, SCHROEDER and FLETCHER, Circuit Judges.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made as of this 21st day of ~~July~~ 1990, by and among the Federal Deposit Insurance Corporation ("FDIC") on the one part, and Kimberleigh Ferm and LaVonne Ferm (the "Ferms") on the other part.

R E C I T A L S

A. Ramona Savings and Loan Association, a California corporation ("Ramona"), was a state-chartered savings and loan association whose deposits were insured by the Federal Savings and Loan Insurance Corporation.

B. On September 12, 1986, the Federal Home Loan Bank Board ("Bank Board") placed Ramona into receivership and appointed the Federal Savings and Loan Insurance Corporation as Ramona's receiver.

C. On September 12, 1986, the Federal Savings and Loan Insurance Corporation in its capacity as Ramona's receiver assigned and transferred to the Federal Savings and Loan Insurance Corporation in its corporate capacity ("FSLIC") certain assets, including all claims and causes of action against Ramona's officers, directors, control persons and others.

D. On September 16, 1986, FSLIC commenced an action in the United District Court, Central District of California, entitled Federal Savings and Loan Insurance Corporation v. John L. Molinaro, et al., Case No. 86-6016 AHS (Gx), which complaint has been amended and supplemented from time to time (the "Action"). The complaint, as amended and supplemented, names the Ferms as defendants.

E. The FDIC, with the enactment

into law of the Financial Institutions Reform, Recovery and Enforcement Act on August 9,1 989, succeeded FSLIC as receiver for Ramona and as plaintiff in the Action;

F. FDIC and the Ferms intend by this Agreement to settle all claims by the FDIC against them arising out of or related to: (1) the Action, (2) the events giving rise to the Action, (3) the Ferms' conduct in conjunction with Ramona, if any, (4) the transfers of assets by John L. Molinaro ("Molinaro") or inter se among the Ferms and (5) the operations of Ramona.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants hereinafter contained, the FDIC and the Ferms agree as follows:

1. This Agreement shall become effective (the "Effective Date") on the date that the court in the Action enters

an order in accordance with California Code of Civil Procedure §§ 877 and 877.6 determining that the settlement between the FDIC, on the one hand, and the Ferms, on the other hand, is in good faith, and dismisses the Action as to the Ferms. The Ferms not later than July 15, 1990 shall prepare and serve and serve a motion seeking judicial determination. On the Effective Date, the FDIC shall request a dismissal of the Action against the Ferms pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure. On the Effective Date, the Ferms shall move the court to dismiss any and all appeals, claims, cross-claims, counterclaims, and/or third party complaints that they have pending against the FDIC or Federal Savings & Loan Insurance Corporation ("FSLIC") in their corporate or receivership capacity, Federal Home Loan Bank Board ("FHLBB"), Federal Home Loan

Bank ("FHLB") of San Francisco, or their successors or assigns, or any agent or employee of those entities.

2. The Ferms, for the purpose of reaching settlement, have disclosed to the FDIC all assets, claims, entitlements and choses in action (collectively "assets") that are directly or beneficially owned by any of them, together with their best estimate of each asset's value. The Ferms' asset disclosure and value estimates are set forth in Exhibit 1. In settlement of the FDIC's claims against them, the Ferms shall transfer to the FDIC those assets identified in subparagraph (a) through (e) herein and provide the other consideration herein described. Said transfers shall be made as follows:

(a) The Ferms shall pay to the FDIC the sum of $_____, which sum represents the total balances in those

certain bank accounts designated Nos. 032-366474 and 103-0000099728 located at the Bank of California and identified in paragraph 6 below (the "BankCal Accounts") together will sums in that certain trust account held at the law offices of Kurahara & Morrissey pursuant to an order of court entered December 27, 1988, to be paid by certified check or checks delivered to the FDIC's counsel on the date provided in paragraph 6 of this Agreement. FDIC agrees to execute joint instructions to the Bank of California directing it to release the BankCal accounts in the manner described in this paragraph. The Ferms also assign to FDIC all right, title and interest to any and all further sums which may be paid into those accounts. FDIC's counsel shall hold those funds in trust until such time as the court rules on the good faith motion described in paragraph 1 above

pursuant to the provisions of paragraph 6 below.

(b) The Ferms shall transfer the quitclaim deed all right, title and interest in the Calcaterra Court property identified in Exhibit 1 on the date provided in paragraph 6 of this Agreement. FDIC agrees to evaluate title to the Calcaterra Court property at its own expense by no later than the Effective Date. Should FDIC be dissatisfied with the condition of the title, it may in its sole discretion declare this Agreement null, void and of no force and effect; affirm this Agreement and elect to retain the Calcaterra Court property; or negotiate an amendment to the Agreement. The Ferms also agree to cooperate as requested by the FDIC in its efforts to obtain title to the Calcaterra Court property clear of any liens or encumbrances, including but

not limited to liens by the Franchise Tax Board by, inter alia, entering into a stipulated judgment of the type attached as Exhibit 2 to this Agreement establishing FDIC's right to the Calcaterra Court property, stipulating to the priority of FDIC's claim to that property, assisting the FDIC in any motion to establish the priority of FDIC's claim to that property, and/or signing such other documents which contain truthful information or taking such other actions as FDIC deems necessary to establish the priority of its right to that property.

(c) The Ferms shall transfer and assign to the FDIC, or to its agent, all right, title and interest they, or either of them, have as a creditor for that certain loan of $60,000 made to Sharon Molinaro, as identified in Exhibit 1 on the date provided in paragraph 6 of

this Agreement. A copy of the assignment is attached as Exhibit 3 to this Agreement.

(d) The Ferms shall transfer and assign all right, title and interest they have in any claims or choses in action against Kurahara & Morrissey or any member or employee thereof, hereby waive the attorney client and attorney work product privileges with regard to all sums paid to Kurahara & Morrissey from the BankCal Accounts, agree to provide to FDIC within seven days of the effective date copies of all retainer agreements and amendments thereto and all invoices for fees and costs received from Kurahara & Morrissey which are in their possession, and agree to cooperate with FDIC in any motion for accounting and/or motion for repayment of attorneys' fees paid from the Bank of California accounts by, inter alia, consenting to be

interviewed and providing truthful information concerning the services rendered in return for those fees and signing a declaration in support of any such motion. A copy of said assignment agreement is attached as Exhibit 4 to this Agreement.

(e) The Ferms shall transfer to the FDIC within seven (7) days after discovery by the Ferms or within seven (7) days after the FDIC's notice to the Ferms all their interest in all assets, claims, entitlements and choses of action, and all income, profit, or appreciation derived from such assets, claims, entitlements or choses of action in which either Ferm has any right, title or interest in or could make a claim for on the Effective Date, or on which she had any right, title or interest in the last ten (10) years, of a value of more than $1,000.00 which are not disclosed in

Exhibit 1 and in the financial statements provided pursuant to paragraph 4 below, regardless of whether said nondisclosure is intentional and regardless when said discovery occurs. Any dispute concerning whether income or assets are subject to transfer to the FDIC pursuant to this subparagraph will be resolved in accordance with paragraph 9 below.

(f) ~~The~~ La Vonne Ferms will retain and need not transfer to the FDIC the following assets listed on Exhibit 1:

(1) The Packers Circle Condominium;

(2) The Mercedes 450 SLC;

(3) The furniture at the Calcaterra Court property;

3. FDIC agrees to return to the ~~Ferms~~ La Vonne within five (5) days of the effective date that jewelry claimed by Kimberleigh Ferm which FDIC received from

the Federal Bureau of Investigation pursuant to that writ of execution levied on or about February 16, 1988 by delivering said jewelry to counsel for the Ferms.

4. Each of the Ferms represents and warrants under penalty of perjury that (a) she knows of no right, title or interest in any cash, income, asset, claim, entitlement, insurance benefit or chose of action of any nature, under the name of any person or entity, beyond those which are referred to in Exhibit 1 annexed and paragraphs 2(a) through (f) and 3 above; (b) she knows of no cash, income, assets, claims, entitlements, insurance benefit, rights to tax refund, or choses in action in which she had interest from July 1, 1986 to the Effective Date which was transferred to any other person or entity, except for those assets, income, claims, choses in

action and transfers disclosed pursuant to paragraph 5 below; and (c) she knows of now cash, income, asset, claim, entitlement, insurance benefit or chose of action in which she has an interest which has been placed in the name, possession, or custody of any person or entity, or which has otherwise been stored, deposited or concealed in any location within or without the United States of a value more than $1,000.00.

5. Commencing not later than forty-eight (48) hours after receipt of written approval of this Agreement by the FDIC, the Ferms shall the FDIC to confirm the representations and warranties made by them in paragraphs 2 and 4 above and in Exhibit 1 hereto and shall assist and cooperate with the FDIC in making this confirmation. The Ferms, to comply with this requirement, shall provide to any accountant designated by the FDIC to

conduct a confirming examination an identification of all of their income, assets, claims, entitlements, and/or choses in action in which they in good faith believe have a value of $1,000, and all changes and transfers in the same occurring since January 1, 1984, and all obligations owed by them or owing by them to others as of the date of the examination. Said accountant shall (a) have unrestricted access to and the right to review all of the Ferms' financial and other records since January 1, 1984, (b) shall have the right to ask questions of and shall receive full and complete answers to said questions from the Ferms, and (c) shall receive the full cooperation of each of the Ferms in any other manner the accountant deems necessary to perform the confirming examination. The FDIC shall have fourteen (14) days following completion

of the confirming examination to advise the Ferms in writing if it is dissatisfied with either the Ferms' warranties and representations as described in paragraph 3 or their cooperation as described in this paragraph, and in that event the FDIC may in its sole discretion declare this Agreement null, void and of no force and effect; affirm this Agreement and elect to obtain assets transferred pursuant to paragraph 2; or negotiate an amendment of this Agreement. Should the FDIC declare this Agreement void pursuant to this paragraph all assets held in escrow pursuant to paragraph 6 shall be returned to the particular Ferm from whom such asset was obtained.

6. The Ferms shall, after execution of the Agreement and not later than ~~July~~ Sept 15, 1990, deliver to Lawyer, Felix & Hall

to hold in escrow pending and until the court's determination that the settlement is in good faith and dismisses the Action as to the Ferms the following: a certified check for $_____ as required by paragraph 2(a) hereof made payable to "Lawler, Felix & Hall, attorneys for the Federal Deposit Insurance Corporation"; all duly notarized and executed deeds and other documents needed to convey title as required by paragraphs 2(b), 2(c) and 2(d) hereof. Upon entry of the court's order determining that the Agreement is a good faith settlement, and after the FDIC has delivered to counsel for the Ferms' jewelry described in paragraph 3, above, and an executed copy of this Agreement, escrow shall terminate and Lawler, Felix & Hall shall, without order by the court, deliver such items, including any accrued interest on the funds, to the FDIC in

satisfaction of the Ferms' obligations under paragraphs 2(a), (b), (c) and (d).

7. In the event that (a) any Ferm fails to timely deliver any of the items specified in paragraph 6, (b) any Ferm fails to cooperate in disclosing the information to be provided pursuant to paragraph 4 above, or (c) the court does not approve the Agreement as a good faith settlement, the Agreement shall be null and void, and all such items which have been delivered to Lawler, Felix & Hall shall be returned forthwith from the particular Ferm from whom such asset was obtained.

8. The Ferms represent and warrant that they will not seek to acquire and will not accept an equity interest in or employment from or sit as a director for any federally-insured financial institution or a subsidiary thereof for the remainder of their lives; provided,

however, that they may seek to obtain loans from such institutions and provided further the prohibited equity interest is one that would require disclosure to any state or federal regulatory agency.

9. The court presiding over the Action shall retain jurisdiction to enforce the provisions of this Agreement. In the event that either of the Ferms dispute whether an asset, claim, entitlement, insurance benefit, chose in action or any interest thereof must be transferred to the FDIC pursuant to paragraph 2(e) above, she may within the time that she is required to make the transfers as described in said paragraphs submit her dispute by means of an appropriate motion for determination by the court. Failure to submit her dispute for such determination within 30 days after she is required to make such transfers, unless the FDIC agrees in

writing that she defendants may have an extension of time to make such a submission, shall conclusively establish that Ferm's obligation to transfer said assets or interests to the FDIC and conclusively waive that Ferm's right to dispute her obligation to make such transfers in any judicial, arbitration or other forum. The court's ruling shall be a de novo determination on the evidence presented and shall be binding upon the parties.

10. The Ferms agree to cooperate with the FDIC in its ongoing civil action by voluntarily providing any truthful information or documents in their possession requested by the FDIC and by making themselves available, to testify at any trial in the civil action without the necessity of service on them of a subpoena.

11. The Ferms shall execute and

deliver to the FDIC such other instruments, and take such further action as the FDIC may reasonably request to carry out the settlement contemplated by the agreement.

12. This Agreement may be signed on behalf of the FDIC by its attorneys of record in the action.

13. Time is of the essence in the execution of an performance under this Agreement by the Ferms. The FDIC's offer of settlement pursuant to the terms of this Agreement shall be null and void unless each of the Ferms (a) executes the Agreement and delivers the executed Agreement and delivers the executed Agreement not later than ~~July~~ Sept. 15, 1990, at 5:00 p.m.; (b) delivers all cashier's checks, executed deeds, and other items described in paragraphs 2(a), (b), (c) and (d) and 6 to Lawler, Felix & Hall not ~~Sept~~

later than ~~July~~ 15, 1990, and 5:00 p.m.; make themselves and their records available for the confirming examination described in paragraph 4 commencing not later than 48 hours of receipt of written approval of this agreement by the FDIC and serve their motion for the court's approval of the settlement not later than Sept ~~July~~ 15, 1990 and set the hearing on said motion within one month of such service.

14. Except for the obligations created by or imposed pursuant to this Agreement, the FDIC for itself, its predecessors, successors and assigns forever releases the Ferms, and each of them, of and from any and all claims, demands, damages, debts, liabilities, accounts, obligations, costs, expenses, cause and causes of action of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected, which now exists, arising out of, or incidental

to, (1) the Action, (2) the events giving rise to the Action, (3) the Ferms' conduct in conjunction with Ramona, if any, (4) Molinaro's transfers of assets and transfers inter se among the Ferms and (5) the operations of Ramona. The Ferms, and each of them, waive any and all claims, demands, debts, liabilities, accounts, obligations, costs, expenses, cause and causes of action of every kind and nature whatsoever, whether known or unknown, suspected or unsuspected, which now exists arising out of, or incidental to, the Action or the events giving rise to the Action against the FDIC, FSLIC, FHLBB, FHLB of San Francisco, their predecessors, successors or assigns and their employees, agents or employees.

15. All items required under this Agreement to be delivered to the FDIC shall be delivered to Lawler, Felix & Hall as attorneys for the FDIC and

directed to the attention of any of Richard L. Fruin, Jr., Edwin W. Duncan or Mark S. Lee at the following address:

Lawler, Felix & Hall
700 South Flower Street
Suite 3100
Los Angeles, CA 90017

or such other person as the FDIC may designate in writing to the Mangano parties.

16. Each of the Parties to this Agreement represents, warrants and agrees as follows:

(a) Each Party has received independent legal advice from its attorneys with respect to the advisability of making the settlement provided herein, and with respect to the advisability of executing this Agreement;

(b) No Party (nor any officer, agent, employee, representative, or attorney of or for any Party) has made any statement or representation to any

other Party regarding any fact relied upon in entering into this Agreement, and no Party is relying upon in entering into this Agreement, and no Party is relying upon any statement, representation or promise of any other Party (or of any officer, agent, employee, representative, or attorney for the other Party) in executing this Agreement or in making the settlement provided for herein, except as expressly stated in this Agreement;

(c) Each Party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement and of all matters pertaining thereto as it deems necessary;

(d) Each Party or responsible officer or agent thereof has read this Agreement and understands the contents hereof. Each of the officers and agents executing this Agreement on behalf of this respective entities is empowered to

do so and thereby binds his respective entity;

(e) Each term of this Agreement is contractual and not merely a recital;

(f) Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters referred to in this Agreement. Nevertheless, it is the intention of the Parties to fully, finally and forever settle and release all matters and all claims which do now exist, may exist, may hereafter exist, or heretofore have existed between them which are referred to in this Agreement, except as expressly provided or reserved in this Agreement; and

(g) The Parties shall execute all such further and additional documents as shall be reasonable, convenient,

necessary or desirable to carry out the provisions of this Agreement. The FDIC agrees to execute whatever documents are necessary to remove any judgment liens, liens, encumbrances or clouds on title with respect to any claims or Judgments of the FDIC on the assets to be retained by the Ferms as set forth in Section 2 of this Agreement.

17. The Ferms, and each of them, by signing this Agreement do not admit to any wrong or liability; this Agreement is made by the Ferms for the purpose of settling the Action; and each of the Ferms expressly denies liability of any kind arising from or in connection with the allegations and events described in the Action.

18. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous

oral and written agreement and discussions. This Agreement may be amended only by an agreement in writing.

19. This Agreement is binding upon and shall inure to the benefit of the Parties hereto, their respective agents, employees, representatives, officers, directors, attorneys, divisions, subsidiaries, affiliates, assigns, heirs, successors in interest and shareholders.

20. The documents to be provided by the Ferms pursuant to Section 5 of this Agreement, shall be deemed delivered upon deposit in the United States mail.

21. Each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party by virtue of the identity of the preparer.

22. This Agreement may be executed in counterparts, and when each Party has

signed and delivered to the FDIC at least on such executed counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one agreement, which shall be binding upon and effective as to all Parties.

23. The Parties further understand and agree that the consideration recited in this Agreement is the sole and only consideration for this Agreement.

24. The undersigned represent that they have read the Agreement, understand the Agreement, and are authorized to execute this Agreement on behalf of their

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respective Party.

FEDERAL DEPOSIT INSURANCE
CORPORATION

Dated: Nov. ~~Sept.~~ ~~July~~ 27, 1990 By (signature)

Dated: Sept. ~~July~~ __, 1990 (signature)
Kimberleigh Ferm

Dated: Sept. ~~July~~ __, 1990 (signature)
LaVonne Ferm

ARTER, HADDEN, LAWLER, FELIX & HALL
RICHARD L. FRUIN, JR
EDWIN W. DUNCAN
MARK S. LEE
J. MICHAEL ECHEVARRIA
700 South Flower Street
Los Angeles, California 90017
(213) 629-9300

Attorneys for Plaintiff
Federal Deposit Insurance
Corporation as Manager for
the FSLIC Resolution Fund

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION AS MANAGER FOR THE FSLIC RESOLUTION FUND,	)	Case No. 86-6016 AHS (Gx)
Plaintiff,	)	NOTICE OF MOTION AND MOTION FOR
vs.	)	ORDERS REQUIRING
JOHN L. MOLINARO, et al.,	)	REPAYMENT OF UNREASONABLE
Defendants.	)	FEES AND COSTS, OR
	)	ALTERNATIVE-
	)	LY
AND RELATED CROSS-ACTIONS.	)	REQUIRING AN
	)	ACCOUNTING
	)	BY
	)	KIMBERLEIGH
	)	FERM'S
	)	ATTORNEYS;

)	MEMORANDUM
)	OF POINTS
)	AND
)	AUTHORITIES
)	AND
)	DECLARATION
)	OF MARK S.
)	LEE IN
)	SUPPORT
)	THEREOF
)	
)	Date:
)	May 6, 1991
)	Time:
)	10:00 a.m.
)	Place:
)	Courtroom
)	of the Hon.
)	Alicemarie
)	H. Stotler
)	

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Please take notice that on May 6, at 10:00 a.m. in the Courtroom of the Honorable Alicemarie H. Stotler, located at 751 West Santa Ana Boulevard, Santa Ana, California, plaintiff Federal Deposit Insurance Corporation as Manager of the FSLIC Resolution Fund ("FDIC") will move for an order requiring repayment of $581,680.42 in unreasonable

fees and costs received from frozen funds by the firm of Kurahawa and Morrissey ("K&M"), or alternatively requiring an accounting by K&M for certain fees and expenses it incurred as counsel for defendant Kimberleigh Ferm ("Ferm").

This motion is made on the grounds that Morrissey received $722,733.31 from frozen funds in 13 months to defend only 2 of the 42 claims in FDIC's complaint while charging unreasonable rates and engaging in inadequately documented, excessive, unnecessary, and/or improper actions such that good cause exists to order repayment of excessive fees or alternative evaluation of the reasonableness of those fees.

This motion is based upon the attached Memorandum of Points and Authorities and accompanying declaration of Mark S. Lee, upon all pleadings, records and files herein, of which the

court has respectfully requested to take judicial notice, and upon such other and further matters as may be presented at the hearing on this motion.

DATED: April 21, 1991

ARTER, HADDEN
LAWLER, FELIX &
HALL
RICHARD L. FRUIN, JR.
EDWIN W. DUNCAN
MARK S. LEE
J. MICHAEL ECHEVARRIA

By: (signature)
Mark S. Lee
Attorneys for
Plaintiff Federal
Deposit Insurance
Corporation as
Manager for the
FSLIC Resolution
Fund